

1 HONORABLE BENJAMIN H. SETTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

11 WASTE ACTION PROJECT,)
12 Plaintiff,) No. 12-05802BHS
13 v.) CONSENT DECREE
14 SUTTER METALS LLC,)
15 Defendant.)
16 _____)

17 I. STIPULATIONS

18 Plaintiff Waste Action Project sent a sixty day notice of intent to sue to defendant Waste
19 Sutter Metals, LLC on July 5, 2012, alleging violations of the Clean Water Act, 33 U.S.C. § 1251
20 et seq., relating to discharges of stormwater from Sutter Metals, LLC's facility in Lacey,
21 Washington, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and
22 costs.

23 Waste Action Project and Sutter Metals LLC agree that settlement of these matters is in
24 the best interest of the parties and the public, and that entry of this Consent Decree is the most
25 appropriate means of resolving this action.

26 Waste Action Project and Sutter Metals LLC stipulate to the entry of this Consent Decree

[PROPOSED]CONSENT DECREE:
Case No. 12-05802BHS - 1

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN ST.
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 without trial or adjudication of any issues of fact or law regarding Waste Action Project's claims
2 or allegations set forth in its Complaint and its sixty-day notice.
3

4 Dated this _____, 2013

Dated this August 29, 2013

5 Sutter Metals LLC

Waste Action Project

7 By _____

8 Chad Sutter
Title:

By _____

Greg Wingard
Title: Executive Director

10 II. ORDER AND DECREE

11 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.

12 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,
13 ADJUDGES, and DECREES as follows:

- 15 1. This court has jurisdiction over the parties and subject matter of this action.
- 16 2. Each signatory for the parties certifies for that party that he is authorized to enter
17 into the agreements set forth below.
- 18 3. This Consent Decree applies to and binds the parties and their successors and
19 assigns.
- 20 4. This Consent Decree applies to the operation, oversight, or both by Defendant
21 Sutter Metals LLC of its facility at 109 Carpenter Road Northeast, Lacey, Washington 98516 (the
22 "Facility").
- 24 5. This Consent Decree is a full and complete settlement of the claims alleged in the
25 Complaint and all other claims known and unknown existing as of the date of entry of this
26 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,

1 without trial or adjudication of any issues of fact or law regarding Waste Action Project's claims
2 or allegations set forth in its Complaint and its sixty-day notice.
3

4 Dated this 30th August, 2013

Dated this _____, 2013

5 Sutter Metals LLC

Waste Action Project

6 By

7 Chad Sutter
8 Title:

By

9 Greg Wingard
Title: Executive Director

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Case No. 12-05802BHS - 2

SMITH & LOWNEY, P.L.L.C.
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(206) 860-2883

1 arising from operations of the Facility. These claims are released and dismissed with prejudice.

2 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its
3 terms.

4 6. Sutter Metals LLC was in violation of certain conditions of its National Pollutant
5 Discharge Elimination System Permit when Waste Action Project commenced suit.

6 7. Sutter Metals LLC agrees to the following terms and conditions in full and
7 complete satisfaction of the claims covered by this decree:

9 a. Sutter Metals LLC will comply fully with all conditions of its National
10 Pollutant Discharge Elimination System Permit No. WAR125037 (the "NPDES permit")
11 and any successor, modified, or replacement permit;

12 b. Sutter Metals LLC will install and implement the best management
13 practices as set forth in the plans and specifications dated July 16, 2013 and prepared by
14 N.L. Olsen & Associates, Inc. (the "Corrective Action Plan"), which include:

16 i. Paved north and south entrances/exits;
17 ii. A regraded and paved customer/employee parking area;
18 iii. Routing all traffic that enters the unpaved portions of the Facility
19 through a commercial wheel wash prior to exiting the Facility;

20 iv. Treatment of all wheel wash water and runoff from paved areas of
21 the Facility by a treatment device(s) designed to remove oil, grease, and metals;

22 v. Gutters and downspouts sufficient to prevent roof runoff from
23 entering the vehicle processing area;

24 vi. Conveyance plumbing and infiltration basins sufficient to infiltrate
25 all treated wheel wash water generated at the Facility and prevent discharges of

1 stormwater during precipitation events up to the 100-year design storm;

2 c. Not later than July 19, 2013, Sutter Metals LLC will apply for any
3 government permits or authorizations necessary to implement the Corrective Action Plan,
4 including any City of Lacey or Thurston County permits;

5 d. Not later than September 30, 2013, Sutter Metals LLC will complete
6 construction and implementation of the Corrective Action Plan, including the best
7 management practices identified in subsections (b)(i)-(vi) of this paragraph 7;

8 e. Not later than October 15, 2013, Sutter Metals LLC will amend and
9 implement its Stormwater Pollution Prevention Plan ("SWPPP") to include:

10 i. The best management practices identified in subsections (b)(i)-(vi)
11 of this paragraph 7 and as described in the Corrective Action Plan; and

12 ii. Detailed provisions for inspection and regularly scheduled
13 maintenance of all stormwater and wheel wash water collection, conveyance,
14 treatment and infiltration devices at the Facility;

15 f. Not later than October 31, 2013, Sutter Metals LLC will transmit a copy of
16 its amended, signed, and certified SWPPP to Waste Action Project;

17 g. Sutter Metals LLC will forward copies of all written or electronic
18 communications between it and the Washington Department of Ecology concerning its
19 compliance with the NPDES permit and the Clean Water Act to Waste Action Project
20 within seven days of Sutter Metals LLC's receipt or transmission of the communication.

21 This obligation will continue through the termination date of this Consent Decree.

22 8. Not later than three years and sixty (60) days after the entry of this Consent
23 Decree, Sutter Metals LLC will pay \$18,750 to Lacey Stream Team for the aquatic habitat

enhancement project described in Attachment A to this Consent Decree, by checks payable and mailed to: City of Lacey Water Resources Stream Team Program, 420 College St. SE, Lacey, WA 98503. Payments will include the following reference in a cover letter or on the check: "Consent Decree, WAP v. Sutter Metals". Copies of the checks and cover letters, if any, shall be sent simultaneously to: Waste Action Project and its counsel. Sutter Metals will make payments as follows:

- a. \$6,250 within sixty (60) days of entry of this Consent Decree;
- b. \$6,250 within two years of entry of this Consent Decree;
- c. \$6,250 within three years of entry of this Consent Decree.

9. Sutter Metals LLC will pay Waste Action Project's reasonable litigation fees and costs in the amount of \$67,000.00. This payment is full and complete satisfaction of any claims Waste Action Project may have under the Clean Water Act for fees and costs. Payment will be made by certified bank check(s) payable and mailed via certified mail to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard A. Smith. Sutter Metals will make payments as follows:

- a. \$10,000.00 within thirty (30) days of entry of this Consent Decree;
- b. A total of \$57,000.00 in monthly payments of at least \$2,375.00 each to be

received not later than the fifth day of each month, beginning January 2014.

In the event that any payment owed by Sutter Metals under this paragraph 9 is not received on or before the due date, all outstanding payments under this Consent Decree shall be accelerated such that they will be immediately due and owing notwithstanding the foregoing payment schedule. In addition to a continued requirement to make the outstanding payment, Sutter Metals will pay to Smith & Lowney PLLC liquidated attorneys fees of two hundred and

1 fifty dollars (\$250) for every day the payment is late. As security for payment of fees owing,
2 Sutter Metals grants Smith and Lowney, PLLC, liens in the amount of fees owing on a Hitachi
3 ZX200 Excavator, Serial No. ARH1310891, and a Unitec Truck Scale, Model No. 46080-10LP-
4 C, Serial No. 53411, located at 109 Carpenter Road NE, Suite B, Lacey, Washington. Not later
5 than the date of entry of this Decree, Sutter Metals will file UCC financing statements indicating
6 the interest of Smith and Lowney, PLLC. Smith and Lowney will file UCC termination
7 statements at the time that Sutter Metals completes payment of the attorney fee obligation.

8
9 10. A force majeure event is any event outside the reasonable control of Sutter Metals
10 LLC that causes a delay in performing tasks required by this decree that cannot be cured by due
11 diligence. Delay in performance of a task required by this decree caused by a force majeure event
12 is not a failure to comply with the terms of this decree, provided that Sutter Metals LLC notifies
13 Waste Action Project of the event; the steps that Sutter Metals LLC will take to perform the task;
14 the projected time that will be needed to complete the task; and the measures that have been taken
15 or will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in
16 completing the task.

17
18 Sutter Metals LLC will notify Waste Action Project of the occurrence of a force majeure
19 event as soon as reasonably possible but, in any case, no later than fifteen days after the
20 occurrence of the event. In such event, the time for performance of the task will be extended for a
21 reasonable period of time following the force majeure event.

22
23 By way of example and not limitation, force majeure events include
24
25 a. Acts of God, war, insurrection, or civil disturbance;
26 b. Earthquakes, landslides, fire, floods and droughts;
c. Actions or inactions of third parties over which defendant has no control,

1 including any local, federal or state government agency;

2 d. Restraint by court order or order of public authority;

3 e. Strikes; and

4 f. Litigation, arbitration, or mediation that causes delay.

5 11. The Court will retain jurisdiction over this matter and allow this case to be
6 reopened without filing fee for the purpose of enabling the parties to apply to the Court for
7 any further order that may be necessary to construe, carry out, enforce compliance and/or
8 resolve any substantive dispute regarding the terms or conditions of this Consent Decree until
9 termination of the Consent Decree per paragraph 13.

10 a. In the event of a substantive dispute regarding implementation of, or
11 compliance with, provisions of this Consent Decree other than paragraph 9, the parties
12 shall resolve the dispute as follows:

13 i. Written Notice: The parties must first attempt to resolve the
14 dispute by serving a written notice that identifies the alleged dispute and requested
15 resolution.

16 ii. In Person Meeting: Upon the request of either party, an in
17 person meeting between the parties must take place within thirty days of service of the
18 written notice and as soon as reasonably possible. At the in person meeting, the
19 parties will make a good faith attempt to resolve the issues.

20 iii. Court Action: If no resolution is reached within thirty (30) days
21 from the date of the in person meeting, or sixty (60) days from service of the written
22 notice, whichever is earlier, the parties may file motions regarding the dispute with the
23 Court.

1 b. In the event of a dispute regarding compliance with paragraph 9 of this
2 Consent Decree:

3 i. Written Notice: The parties must first attempt to resolve the
4 dispute by serving a written notice that identifies the alleged dispute and requested
5 resolution.

6 ii. Court Action: If no resolution is reached within fourteen (14)
7 days from service of the written notice, the parties may file motions regarding the
8 dispute with the Court.

9 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
10 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
11 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
12 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent
13 Decree by the parties, Waste Action Project will serve copies of it upon the Administrator of the
14 U.S. EPA and the Attorney General.

15 13. This Consent Decree takes effect upon entry by the court. It terminates three years
16 after that date, or upon completion of the tasks identified in paragraph 7(b)-(f) of this Consent
17 Decree, whichever is later.

18 14. Both parties have participated in drafting this decree.

19 15. This Consent Decree may be modified only upon the approval of the court.

20 16. If for any reason the court should decline to approve this Consent Decree in the
21 form presented, this Consent Decree is voidable at the discretion of either party. The parties
22 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court
23 to entry of this Consent Decree.

1 17. Notifications required by this Consent Decree must be in writing. The sending
2 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
3 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
4 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
5 communication regarding this decree to be valid, it must be delivered to the receiving party at the
6 addresses listed below or to any other address designated by the receiving party in a notice in
7 accordance with this paragraph 17.

9 **if to Waste Action Project:**

10 Waste Action Project
11 P.O. Box 4832
12 Seattle, WA 98194
13 email: gwingard@earthlink.net

14 **and to:**

15 Smith & Lowney PLLC
16 2317 East John St.
17 Seattle, WA 98112
18 email: clairet@igc.org

19 **if to Sutter Metals LLC:**

20 Sutter Metals, LLC
21 109 Carpenter Road NE
22 Lacey, WA 98516
23 email: chad@suttermetals.com

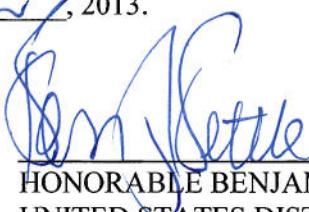
24 **and to:**

25 Michael E. Tardif
26 Freimund Jackson Tardif & Benedict Garratt, PLLC
27 711 Capitol Way South, Suite 602
28 Olympia, WA 98501
29 email: miket@fjtlaw.com

30 A notice or other communication regarding this Consent Decree will be effective when
31 received unless the notice or other communication is received after 5:00 p.m. on a business day,
32

1 or on a day that is not a business day, in which case the notice will be deemed received at 9:00
2 a.m. on the next business day. A notice or other communication will be deemed to have been
3 received: (a) if it is delivered in person or sent by registered or certified mail or by nationally
4 recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if
5 the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of
6 a change in address for which no notice was given, then upon that rejection, refusal, or inability to
7 deliver; or (c) for notice provided via e-mail, upon receipt of a confirming response or a "read
8 receipt" from the party receiving notice.

10 DATED this 25 day of October, 2013.



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13 HONORABLE BENJAMIN H. SETTLE
14 UNITED STATES DISTRICT JUDGE
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Attachment A



Stream Team
EDUCATE • PROTECT • RESTORE
City of Lacey • Tumwater • Thurston County

CITY COUNCIL
VIRGIL CLARKSON
Mayor
JASON HEARN
Deputy Mayor

JEFF GADMAN
RON LAWSON
CYNTHIA PRATT
ANDY RYDER
LENNY GREENSTEIN

CITY MANAGER
SCOTT SPENCE

August 28, 2013

United States Department of Justice

Dear Sir or Madame:

The City of Lacey Stream Team has read the proposed *Waste Action Project vs. Sutter Metals, LLC*, Consent Decree No. 12-05802BHS. This letter is intended to be an attachment to this Consent Decree.

The City of Lacey Stream Team is a program of the City of Lacey Stormwater Utility within the Water Resources Department. Stream Team is a regional program, whose mission is to protect and enhance the water resources, associated habitats and wildlife of Thurston County through citizen education and action.

The City of Lacey currently owns nearly 500 acres of property, located approximately 1 mile northwest of the Sutter Metals site. These parcels include nearly 1 mile of Woodland Creek frontage as well as frontage to several of its smaller tributaries, such as Fox Creek, Eagle Creek and Palm Creek. There are several areas along the Woodland Creek corridor within these City-owned parcels lacking healthy, native riparian buffers. The \$18,750 that the City of Lacey Stream Team will receive from Sutter Metals, LLC under the terms of the Consent Decree will be used to improve the native vegetation along the riparian corridor of Woodland Creek, further improving water quality and habitat for salmon and other wildlife.

Any money received under the Consent Decree will be used for this project. None will be used for lobbying purposes or compensatory mitigation. Once all of the funds are received and spent, the City of Lacey Stream Team will report to the Justice Department, the court and the parties as to how the funds were utilized, to demonstrate conformance with the nexus of the Consent Decree.

Sincerely,

Peter C. Brooks, P.E.
City of Lacey
Water Resources Manager